

MARK H. PERRAULT  
v.  
ACTING MINNEAPOLIS AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 94-116-A

Decided September 9, 1994

Appeal from the denial of a request that the Bureau of Indian Affairs provide services under the Timber Stand Improvement Program.

Affirmed.

1. Indians: Indian Self-Determination and Education Assistance Act: Generally

For purposes of review by the Board of Indian Appeals of a decision rendered by a Bureau of Indian Affairs Area Director concerning tribal performance of functions covered by a contract or self-governance compact under the Indian Self-Determination and Education Assistance Act, 25 U.S.C. §§ 450-450n (1988 and Supps.), the contract or compact is conclusive evidence that the tribe has the authority to perform the functions.

2. Indians: Generally--Indians: Indian Self-Determination and Education Assistance Act: Generally--Regulations: Waiver

The Department of the Interior lacks authority to waive the government-to-government relationship between the Federal Government and the Indian tribes, which was reaffirmed by Congress in the Indian Self-Determination and Education Assistance Act, 25 U.S.C. §§ 450-450n (1988 and Supps.).

APPEARANCES: Mark H. Perrault, pro se.

OPINION BY CHIEF ADMINISTRATIVE JUDGE LYNN

Appellant Mark H. Perrault seeks review of an April 22, 1994, decision issued by the Acting Minneapolis Area Director, Bureau of Indian Affairs (Area Director; BIA), denying appellant's request that BIA provide services under the Timber Stand Improvement (TSI) Program to the Eli Curtis Allotment on the Keweenaw Bay Reservation. For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

### Background

Appellant is the sole owner of the Eli Curtis Allotment. Based on information in the administrative record, it appears that the allotment was recommended for TSI work sometime in 1991, and that the work was funded in the 1992 Forest Development Plan for BIA's Michigan Agency.

Apparently as of September 23, 1992, the TSI Program was contracted to the Keweenaw Bay Indian Community (Community) under the Indian Self-Determination and Education Assistance Act, 25 U.S.C. §§ 450-450n (1988 and Supps.) 1/ (P.L. 93-638), Contract No. CTF60T47316. This contract has been extended and is currently in force. Funding for work on the Eli Curtis Allotment was included under the 1992 P.L. 93-638 contract.

The administrative record indicates that the Community was interested in purchasing the allotment, and had agreed on a purchase price with appellant. Although the Community performed some work preparatory to the TSI work for the allotment, a disagreement arose between appellant and the Community, apparently concerning the purchase price for the allotment. It appears that the Community decided not to purchase the allotment, and not to complete the TSI work.

Appellant subsequently contacted the Superintendent, Michigan Agency (Superintendent), asking that BIA approve the work, and that he be allowed to do the cutting himself under a BIA purchase order. By letter of March 4, 1994, the Superintendent informed appellant that the Community was responsible for the TSI Program under the P.L. 93-638 contract, and that BIA “[could not] by-pass [the government-to-government] relationship to provide services directly to individual Indians without the tribe’s consent.”

After the Area Director affirmed the Superintendent’s decision on April 22, 1994, appellant appealed to the Board. Although advised of his right to do so, appellant elected not to file an opening brief.

### Discussion and Conclusions

Appellant’s arguments are contained in his notice of appeal, which states in relevant part:

If the best interest of the Indian is to be served, he or she should be allowed to take part in decision making in concerns of their own allotted lands. He or she should also have the option of benefiting from any financial benefits from this allotment. The [BIA] shifted the role as parent to the Indian, to the Tribes, using the "government to government" policy. In this case, the tribe is now the parent for the individual Indian. This should not be the case. Tribal politics on the reservation, especially a small reservation, [are] an unfair obstacle in the

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1/ All further citations to the United States Code are to the 1988 edition and supplements.

process of individual self-determination. I am asking that this policy be waived. Decision-making on matters such as this, concerning allotted lands, must allow owner input.

(Notice of Appeal at 1).

[1] The administrative record contains a copy of the P.L. 93-638 contract, showing that the TSI program was, in fact, contracted to the Community through September 30, 1994. <sup>2/</sup> For purposes of Board review of the Area Director's decision, this contract constitutes conclusive evidence that the Community has the authority to perform the functions covered by it. See 25 U.S.C. § 450f(a)(1) which provides in pertinent part that "[t]he Secretary is directed, upon the request of any Indian tribe by tribal resolution, to enter into a self-determination contract or contracts with a tribal organization to plan, conduct, and administer" BIA programs.

[2] Rather than disputing the existence or effect of the P.L. 93-638 contract, appellant asks BIA and/or the Board to waive the government-to-government relationship with the Community so that he can personally do TSI work on his allotment and be paid with Federal funds. The Department of the Interior does not have authority to waive the government-to-government relationship between the Federal Government and the Indian tribes, which was reaffirmed by Congress in P.L. 93-638. Cf. Skye v. Aberdeen Area Director, 26 IBIA 169 (1994) (BIA lacks authority under 25 CFR 1.2 to waive a statutory restriction in the guise of waiving regulations in 25 CFR Chapter I).

Although it appears that appellant has chosen the present administrative appeal route because of disagreements with the Community, the Area Director properly refrained from intervening in this matter.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the April 22, 1994, decision of the Acting Minneapolis Area Director is affirmed.

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Kathryn A. Lynn  
Chief Administrative Judge

I concur:

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Anita Vogt  
Administrative Judge

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<sup>2/</sup> The contract may have been extended since the Area Director filed the administrative record with the Board.